

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Whitney Beber	Team: Squad #8	CCRB Case #: 201807202	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 08/18/2018 9:44 AM	Location of Incident: front of 137-24 95th Street	Precinct: 106	18 Mo. SOL 2/18/2020	EO SOL 2/18/2020	
Date/Time CV Reported Sat, 08/18/2018 10:05 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 08/30/2018 11:13 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Ted Saintgerard	26747	934145	102 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Michael Marciano	20313	962574	106 PCT
2. POM Richard Gonzalez	20794	943314	106 PCT
3. POF Marisol Torres	04161	952298	102 PCT
4. POM Francis Caravetto	21622	963899	106 PCT
5. POM Franklin Beauvoir	28382	957368	106 PCT
6. POM Miguel Leon	10222	925607	102 PCT
7. POM Joseph Esposito	10723	963979	102 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Ted Saintgerard	Force: Police Officer Ted Saintgerard used physical force against § 87(2)(b)	
B.POM Ted Saintgerard	Discourtesy: Police Officer Ted Saintgerard spoke discourteously to § 87(2)(b)	
C.POM Ted Saintgerard	Discourtesy: Police Officer Ted Saintgerard spoke discourteously to an individual.	
D.POM Ted Saintgerard	Force: Police Officer Ted Saintgerard used physical force against an individual.	
E.POM Ted Saintgerard	Discourtesy: Police Officer Ted Saintgerard spoke discourteously to an individual.	
F.POM Ted Saintgerard	Discourtesy: Police Officer Ted Saintgerard spoke discourteously to § 87(2)(b)	
G.POM Ted Saintgerard	Force: Police Officer Ted Saintgerard used physical force against § 87(2)(b)	
H.POM Ted Saintgerard	Off. Language: Police Officer Ted Saintgerard made remarks to § 87(2)(b) based upon race.	
I.POM Ted Saintgerard	Discourtesy: Police Officer Ted Saintgerard spoke discourteously to § 87(2)(b)	

## Case Summary

On August 18, 2018, Sergeant Rojas filed a complaint on § 87(2)(b)'s behalf with the Internal Affairs Bureau. On August 30, 2018, the CCRB received the complaint.

On August 18, 2018, at approximately 9:44 a.m., Police Officer Ted Saint-Gerard and Police Officer Marisol Torres of the 102<sup>nd</sup> Precinct, responded to a 911 call for a stolen vehicle at 32 Rocakaway and 86<sup>th</sup> Street in Queens. When they arrived, § 87(2)(b) told them that her ex-boyfriend, § 87(2)(b) had stolen her mother's car and was at her house "smashing" into cars. Police Officer Saint-Gerard and Police Officer Torres went to 137-24 95<sup>th</sup> Street in Queens, where they found § 87(2)(b) who appeared asleep in the alleged stolen vehicle. § 87(2)(b) and her brother approached the vehicle in which § 87(2)(b) was an occupant and Police Officer Saint-Gerard told them to stay on the other side of the street. Officers from the 106<sup>th</sup> Precinct arrived in response to Police Officer Saint Gerard calling for assistance. Police Officer Saint-Gerard told the responding officers to take § 87(2)(b) out of the vehicle. Police Officer Saint-Gerard, along with Police Officer Richard Gonzalez, pulled § 87(2)(b) who remained asleep, out of the vehicle by his left hand, causing him to land on the pavement, (**Allegation A: Force-** § 87(2)(g) Police Officer Saint-Gerard then allegedly referred to § 87(2)(b) as an asshole (**Allegation B: Discourtesy-** § 87(2)(g) Police Officer Saint-Gerard told § 87(2)(b)'s brother to "Back the fuck up," and grabbed his left shoulder and pushed him twice (**Allegations C and D: Discourtesy and Force-**, § 87(2)(g) Police Officer Saint-Gerard told him to, "Fuck out of here," and continued to say, "Back the fuck up," and then said, "Stupid motherfucker," (**Allegation E:** § 87(2)(g) § 87(2)(b)

While handcuffed on the ground, § 87(2)(b) spat. Police Officer Saint-Gerard told him, "Do that again, I swear, I will fuck you up. I will bust the shit out [of] you. Spit on me again I will fuck you up," (**Allegation F: Discourtesy-** § 87(2)(g) After § 87(2)(b) spit again, Police Officer Saint-Gerard punched § 87(2)(b) in his face twice (**Allegation G:** § 87(2)(g) § 87(2)(b)

After Police Officer Saint-Gerard punched § 87(2)(b) he talked to § 87(2)(b) about what occurred. He said, "Why when ya'll come to court, it's nigga this, nigga that? He didn't say that? I said guy stay back. Shut the fuck up nigga. He didn't say that?" (**Allegations H and I: Offensive Language and Discourtesy-** § 87(2)(g) Police Officer Saint-Gerard told § 87(2)(b) that he does not let anyone wag their finger in his face. § 87(2)(b) told Police Officer Saint-Gerard, that even with a badge, she would not let anyone either. Police Officer Saint-Gerard told § 87(2)(b) "Never mind no fucking badge. He ain't spitting in my fucking face," (**within Allegation I:** § 87(2)(g) § 87(2)(b)

Seven body-worn camera videos were obtained for this incident (Board Review 01-07).

§ 87(2)(b) was charged with criminal mischief, theft, criminal contempt, resisting arrest, harassment and disorderly conduct.

PO Saint-Gerard was suspended for an unknown amount of time as a result of this incident pending an investigation from Patrol Borough Queens South Investigations. As of March 12, 2019, Patrol Borough Queens South Investigations completed their investigation and recommended charges against Police Officer Saint-Gerard for using excessive force. The case has not yet been resolved at trial.

### **Findings and Recommendation**

#### **Allegation A-Force: Police Officer Ted Saint-Gerard used physical force against § 87(2)(b)**

While an Police Officer Gonzalez assisted with § 87(2)(b)'s removal from the vehicle, because PO Saint-Gerard took the lead in removing § 87(2)(b) from the vehicle, and instructed Police Officer Gonzalez to assist him, the allegation is pleaded solely against Police Officer Saint-Gerard.

No statement was obtained from § 87(2)(b) because the investigation was unable to successfully contact him via mail or telephone. § 87(2)(b) was not contacted because she had an order of protection against § 87(2)(b) and she was named in the complaint report for this incident as a victim. § 87(2)(b)'s brother's name and contact information is unknown. The investigation proceeded based on the body-worn camera footage obtained from this incident.

As per Police Officer Saint-Gerard, he and Police Officer Marisol Torres, responded to a 911 call for a stolen vehicle (Board Review 08). When they arrived § 87(2)(b) told them that her ex-boyfriend § 87(2)(b) had stolen her mother's car and that he was at her house "smashing" into cars. Police Officer Saint-Gerard and Police Officer Torres went to 137-24 95<sup>th</sup> Street in Queens, where they found § 87(2)(b) who appeared asleep in the alleged stolen vehicle. Police Officer Saint-Gerard opened the car door and unlocked the door for his partner on the other side. The car, which remained running, began to roll. PO Saint-Gerard put his arm inside the car and put it in park. PO Saint-Gerard opened the car door to remove § 87(2)(b) and arrest him. He then called for backup.

§ 87(2)(b) and her brother approached the officers. Police Officer Saint-Gerard told them to stay on the other side of the street. Officers from the 106<sup>th</sup> Precinct arrived and Police Officer Saint-Gerard told them to take the § 87(2)(b) out of the vehicle. Police Officer Saint-Gerard grabbed § 87(2)(b)'s arm, pulled him out and put him on the ground before trying to handcuff him. An officer from the 106<sup>th</sup> Precinct helped Police Officer Saint-Gerard pull § 87(2)(b) out of the car. § 87(2)(b) landed on his face and chest when he hit the ground.

At 4:35 minutes an officer asks, "How do you want to do this?" Police Officer Saint-Gerard replies, "Just yank him out." At 4:42 minutes of Police Officer Saint-Gerard's body-worn camera (saved in IA #73), Police Officer Saint-Gerard and an unidentified officer, pull § 87(2)(b) out of a car by his left hand. § 87(2)(b) lands on his back on the pavement.

Patrol Guide section 221-01 states that force may be used to place a person into custody, and that any force must be reasonable under the circumstances (Board Review 09). Patrol Guide Section 221-01 states that when determining whether the use of force is reasonable, officers should consider the immediacy of the perceived threat or harm to the members of the service and bystanders, whether the subject is actively resisting custody, attempting to evade arrest by flight.

As per Police Officer Saint-Gerard and the body-worn camera footage, § 87(2)(b) appeared asleep, and remained still while the car rolled before Police Officer Saint-Gerard put the car in park. § 87(2)(b) was not actively resisting or attempting to evade arrest by flight when he was pulled from the vehicle. While pulling § 87(2)(b) out of the vehicle may have been necessary due to him being asleep, § 87(2)(b) struck the ground face first in a manner which could have potentially led to significant injury. Based on the body-worn camera footage, Police Officer Saint-Gerard did not take any measure to prevent § 87(2)(b) from landing on his face.

§ 87(2)(g)

**Allegation B-Discourtesy: Police Officer Ted Saint-Gerard spoke discourteously to § 87(2)(b)**

**Allegation C -Discourtesy: Police Officer Ted Saint-Gerard spoke discourteously to an individual.**

**Allegation D- Force: Police Officer Ted Saint-Gerard used physical force against an individual.**

**Allegation E- Discourtesy: Police Officer Ted Saint-Gerard spoke discourteously to an individual.**

Police Officer Saint-Gerard did not have an independent recollection of having called § 87(2)(b) an asshole. While they were trying to handcuff § 87(2)(b) § 87(2)(b) § 87(2)(b)'s brother approached behind Police Officer Saint-Gerard and came within an arms' reach of Police Officer Saint-Gerard and § 87(2)(b) § 87(2)(b). Police Officer Saint-Gerard told § 87(2)(b) § 87(2)(b)'s brother to "Get away," "Go back," "Get the fuck back," and "Fuck out of here." Police Officer Saint-Gerard also called him a "stupid motherfucker." § 87(2)(b) § 87(2)(b)'s brother complied after Police Officer Saint-Gerard told § 87(2)(b) § 87(2)(b)'s brother to, "Get the fuck back." Police Officer Saint-Gerard stated that he did not appear to want to listen but complied and added that he had to push him "a little bit." Police Officer Saint-Gerard pushed him on his chest approximately two times.

In Police Officer Saint-Gerard's body-worn camera footage, at 3:45 minutes, Police Officer Saint-Gerard tells § 87(2)(b) and her brother to stay back repeatedly, but they repeatedly approach the officers (Board Review 03). At 4:24 minutes Police Officer Saint-Gerard referred to § 87(2)(b) as an asshole saying, "This asshole," while speaking to another officer prior to pulling § 87(2)(b) out of the vehicle. At 4:49 minutes, Police Officer Saint-Gerard says, "Back the fuck up, and grabs what appears to be the left shoulder and possibly the side of a

§ 87(2)(b) s brother's neck." Police Officer Saint-Gerard pushes on his back and says, "Fuck out of here."

Patrol Guide Section 203-09 requires members of Service to interact with civilians in a professional manner (Board Review 10).

DAO-DCT Case number 2017-17005 states that the tribunal has held that profane remarks, made during stressful situations or while an officer is trying to get a chaotic situation under control, are not misconduct (Board Review 11).

§ 87(2)(g)  
[REDACTED]

It is undisputed that § 87(2)(b) s brother approached Police Officer Saint-Gerard while he was trying to handcuff § 87(2)(b). It is undisputed that Police Officer Saint-Gerard told § 87(2)(b) s brother to "Back the fuck up," and "Fuck out of here," and called him a "stupid motherfucker."

When Police Officer Saint-Gerard told § 87(2)(b) s brother to "back the fuck up," he was within arm's reach of PO Saint-Gerard at the time Police Officer Saint-Gerard was trying to handcuff § 87(2)(b) § 87(2)(g)  
[REDACTED]

§ 87(2)(g)  
[REDACTED]

Patrol Guide Section 221-01 states that force may be used when it is reasonable to ensure the safety of a member of the service (Board Review 09). When determining whether the use of force is reasonable, members of service should consider the actions taken by the subject, the immediacy of the perceived threat or harm to the members of service and the duration of the action.

It is undisputed that Police Officer Saint-Gerard pushed § 87(2)(b) s brother. At the time Police Officer Saint-Gerard pushed him twice, he was within arm's reach of Police Officer Saint-Gerard who was trying to handcuff the suspect, § 87(2)(b) and he had already issued instructions to § 87(2)(b) and her brother to stay back.

§ 87(2)(g), § 87(2)(b)

**Allegation F-Discourtesy: Police Officer Ted Saint-Gerard spoke discourteously to § 87(2)(b)**

**Allegation G- Force: Police Officer Ted Saint-Gerard used physical force against § 87(2)(b)**

As per Police Officer Saint-Gerard, he returned to § 87(2)(b) after placing him on the ground. § 87(2)(b) was cursing, flailing his arms, spitting and calling Police Officer Saint-Gerard a “nigger.” § 87(2)(b) tried to also stand up. Police Officer Saint-Gerard told § 87(2)(b) to “stay down.” § 87(2)(b) spat in Police Officer Saint-Gerard’s eye. Police Officer Saint-Gerard was standing up when § 87(2)(b) spat in his eye. Police Officer Saint-Gerard told § 87(2)(b) to not do that again. Police Officer Saint-Gerard stated that he “cursed out” § 87(2)(b) and told him “Don’t fucking spit on me again.” § 87(2)(b) spat upwards and into Police Officer Saint-Gerard’s eye again. At that point, Police Officer Saint-Gerard swung with his arm at § 87(2)(b) to make him stop and made contact with § 87(2)(b)’s face. Police Officer Saint-Gerard swung twice, one after the other at § 87(2)(b)’s face. At the time Police Officer Saint-Gerard hit § 87(2)(b) was rear handcuffed and seated with his bottom on the ground. There was no reason that Police Officer Saint-Gerard chose to hit § 87(2)(b) as opposed to employing another method to prevent him from spitting. Other than spitting and trying to stand up § 87(2)(b) was not doing anything else with his body that was a specific threat to PO Saint-Gerard.

Police Officer Saint-Gerard’s body-worn camera shows that after § 87(2)(b) spits, at 6:36 minutes, Police Officer Saint-Gerard says, “Do that again, I swear, I will fuck you up. I will bust the shit out [of] you.” When he says this, there are at least two other officers standing next to him. At 6:38 minutes, after Police Officer Saint-Gerard threatens § 87(2)(b) Police Officer Torres says, “Stop Ted, stop,” Board Review 03).

Police Officer Saint-Gerard did not prepare any memo book entries related to this incident. He did not go Line of Duty as a result of being spat on. An Investigating Supervisors Assessment Report (Board Review 14)

At 2:31 minutes of Police Officer Joseph Esposito’s (of the 102<sup>nd</sup> Precinct) body-worn camera, PO Saint-Gerard punches § 87(2)(b) (Board Review 05).

The video footage does not capture § 87(2)(b) flailing his arms or trying to stand up.

Police Officer Saint-Gerard did not make any memo book entries related to this incident. He did not go Line of Duty as a result of being spat on.

An Investigating Supervisor's Assessment Report (Board Review 14) prepared by Captain Eynat Naor of the 102<sup>nd</sup> Precinct noted that he viewed Police Officer Saint-Gerard's body-camera footage and determined that Police Officer Saint-Gerard's use of force was excessive.

A UF49 was prepared in regard to this incident (Board Review 15). Of all the officers interviewed in connection to this incident, only one officer, Police Officer Marisol Torres of the 102<sup>nd</sup> Precinct, stated that she saw § 87(2)(b) spit at Police Officer Saint-Gerard. None of the officers interviewed said that they saw § 87(2)(b) spit in Police Officer Saint-Gerard's face, nor did any of them say they saw § 87(2)(b)'s spit make any contact with Police Officer Saint-Gerard's person.

Patrol Guide Section 203-09 requires members of Service to interact with civilians in a professional manner (Board Review 10).

DAO-DCT Case number 2017-17005 states that the tribunal has held that profane remarks, made during stressful situations or while an officer is trying to get a chaotic situation under control, are not misconduct (Board Review 11).

It is undisputed that Police Officer Saint-Gerard told § 87(2)(b) to "I will fuck you up. I will bust the shit out [of] you." At the time this statement was made § 87(2)(b) posed little physical threat as he was seated below Police Officer Saint-Gerard and was restrained with handcuffs. § 87(2)(b) was not doing anything besides spitting and trying to get up.

§ 87(2)(g)

Patrol Guide section 221-01 states that force may be used to place a person into custody, and that any force must be reasonable under the circumstances (Board Review 09). Patrol Guide Section 221-01 states that when determining whether the use of force is reasonable, officers should consider the immediacy of the perceived threat or harm to the members of the service and bystanders, whether the subject is actively resisting custody, attempting to evade arrest by flight.

At the time Police Officer Saint-Gerard punched § 87(2)(b) he was sitting and he was handcuffed. The video did not capture whether § 87(2)(b) was flailing his arms or trying to stand up prior to being handcuffed. It is undisputed that § 87(2)(b) did spit, however it is unclear whether the spit made contact with Police Officer Saint-Gerard, and if it did, where that contact was made. After § 87(2)(b) spit the first time, Police Officer Saint-Gerard could have walked away given that § 87(2)(b) was handcuffed, seated, and surrounded by officers, but he remained next to § 87(2)(b) and threatened him with what he would do if § 87(2)(b) spit at him again. There were at least two other officers around § 87(2)(b) at the time, including Police Officer Torres, who told Police Officer Saint-Gerard to stop after he threatened § 87(2)(b).

§ 87(2)(g)

**Allegation H-Discourtesy: Police Officer Ted Saint-Gerard spoke discourteously to § 87(2)(b)**

**Allegation I- Offensive Language: Police Officer Ted Saint-Gerard made statements regarding race to § 87(2)(b)**

Police Officer Saint-Gerard spoke to § 87(2)(b) again after hitting § 87(2)(b). Although he could not remember anything they talked about, he stated that he did use profanity when speaking to her. Police Officer Saint-Gerard talked to § 87(2)(b) about her brother and recounted what her brother said to him, including that he referred to Police Officer Saint-Gerard as a nigger. “When ya’ll come to court its nigger this nigger that.” Police Officer Saint-Gerard stated this was something that her brother said to him. Police Officer Saint-Gerard did not remember saying, “Never mind no fucking badge, you ain’t spitting in my fucking face.” When Police Officer Saint-Gerard was shown the video footage, he acknowledged that the purpose of detailing what § 87(2)(b)’s brother said to him was for conversational purposes and explaining the words her brother used when speaking to him. He stated that he chose to use the profanity.

Beginning at 19:45 minutes of Police Officer Torre’s body-worn camera video, Police Officer Saint-Gerard says, “When ya’ll come into court it’s nigga this, nigga that? He didn’t say that? I said guy stay back, stay back. Shut the fuck up nigga. That’s what he said,” while he was speaking to § 87(2)(b) (Board Review 04). He went on to say that he would not let anyone wave a finger in his face. § 87(2)(b) stated that if she had a badge, she would not do so either. Police Officer Saint-Gerard replied, “Never mind no fucking badge. He ain’t spitting in my fucking face alright.”

Patrol Guide Section 203-09 requires members of Service to interact with civilians in a professional manner (Board Review 10).

DAO-DCT Case number 2017-17005 states that the tribunal has held that profane remarks, made during stressful situations or while an officer is trying to get a chaotic situation under control, are not misconduct (Board Review 10).

It is undisputed that PO Saint-Gerard used both profane language and uttered a racial slur when speaking with § 87(2)(b). At the time he made these remarks, § 87(2)(b) had already been detained. There was no longer a chaotic situation that needed to be placed under control while he conversed with § 87(2)(b).



§ 87(2)(g)

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### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 12).
- Police Officer Saint-Gerard has been a member of service for 15 years and has been a subject of seven CCRB complaints and 22 allegations, none of which were substantiated.

§ 87(2)(g)

As noted above, Patrol Borough Queens South Investigations recommended charges against Police Officer Saint-Gerard for using excessive force.

### **Mediation, Civil, and Criminal Histories**

- This complaint was not suitable for mediation.
  - § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs)
- A request for a Notice of Claim was submitted on March 6, 2019, from the New York City Comptroller's office and will be added to the case file upon receipt.

Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_

Signature

Print Title & Name

Date

Squad Leader: \_\_\_\_\_

Signature

Print Title & Name

Date

Reviewer: \_\_\_\_\_  
Signature                      Print Title & Name                      Date